RECORD IMPOUNDED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2992-15T2
A-4277-15T2

NEW JERSEY DIVISION OF CHILD PROTECTION AND PERMANENCY,

Plaintiff-Respondent,

v.

S.J. and H.L.,

Defendants-Appellants.

IN THE MATTER OF THE GUARDIANSHIP OF U.J. and S.J.,

Minors.

Argued Telephonically February 8, 2017 – Decided February 21, 2017

Before Judges Sabatino and Haas.

On appeal from Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, Docket No. FG-09-250-15.

Jennifer L. Gottschalk, Designated Counsel, argued the cause for appellant S.J. (Joseph E. Krakora, Public Defender, attorney; Ms. Gottschalk, on the brief).

Meghan K. Gulczynski, Designated Counsel, argued the cause for appellant H.L. (Joseph E. Krakora, Public Defender, attorney; Ms. Gulczynski, on the briefs).

Lauren J. Oliverio, Deputy Attorney General, argued the cause for respondent (Christopher S. Porrino, Attorney General, attorney; Andrea M. Silkowitz, Assistant Attorney General, of counsel; Ms. Oliverio, on the brief).

Joseph H. Ruiz, Designated Counsel, argued the cause for minors (Joseph E. Krakora, Public Defender, Law Guardian, attorney; Mr. Ruiz, on the brief).

PER CURIAM

In these two consolidated cases, defendants S.J. and H.L.[1] appeal from the March 8, 2016 judgment of guardianship of the Family Part terminating their parental rights to their two children, U.J. ("Susan"), born in 2010, and S.J., Jr. ("Sam"), born in 2011. Defendants contend that the Division of Child Protection and Permanency ("Division") failed to prove each prong of N.J.S.A. 30:4C-15.1(a) by clear and convincing evidence. The Law Guardian supports the termination on appeal as it did before the trial court.

Based on our review of the record and applicable law, we are satisfied the evidence in favor of the guardianship petition overwhelmingly supports the decision to terminate the parental rights of both defendants. Accordingly, we affirm substantially

[1] We refer to the adult parties by initials, and to the children by fictitious names, to protect their privacy.

for the reasons set forth in Judge Bernadette DeCastro's thorough written decision rendered on March 8, 2016.

We will not recite in detail the history of the Division's involvement with defendants. Instead, we incorporate by reference Judge DeCastro's factual findings and legal conclusions. We add only the following comments.

In August 2012, defendants left their children alone in a motel room following a domestic dispute. When the police entered the room, they found two-year-old Susan and eleven-month-old Sam alone with liquor and beer bottles littering the floor. The children had been left alone in the room for approximately one hour.

When S.J. returned to the motel later that evening, the police arrested him on a child endangerment charge. He admitted that he and H.L. had been drinking that day. H.L. never returned to the motel. The police notified the Division, which executed "a Dodd removal,"[2] took custody of the children, and placed them in a resource home.

[2] "A 'Dodd removal' refers to the emergency removal of a child from the home without a court order, pursuant to the Dodd Act, which, as amended, is found at N.J.S.A. 9:6-8.21 to -8.82. The Act was authored by former Senate President Frank J. 'Pat' Dodd in 1974." N.J. Div. of Youth & Family Servs. v. N.S., 412 N.J. Super. 593, 609 n.2 (App. Div. 2010).

Three days later, H.L. called the Division. The Division advised her to report to court for the Dodd hearing, but she failed to do so. S.J. pled guilty to child endangerment and was incarcerated in the county jail from August 2012 to August 2013. During this period, the Division brought the children to the jail for weekly visits with S.J.

Several months after leaving the children in the motel room, H.L. returned and was charged with child endangerment. She had her first visit with the children on November 3, 2012. However, between that date and the date of her incarceration as the result of her conviction in January 2013, H.L. only visited the children four times. Once she was in jail, the Division brought the children to the jail for weekly visits with her.[3]

While incarcerated in the county jail, H.L. received domestic violence counseling, parenting skills training, individual and group counseling, and sexual abuse counseling. When H.L. was released in April 2013, she entered a substance abuse treatment program, where she received additional counseling and weekly visits with the children. However, H.L. left the program after

[3] In May 2013, H.L. stipulated that she abused or neglected the children under N.J.S.A. 9:6-8.21(c)(4)(b) by leaving them unattended in the motel room. In September 2013, the trial court made a similar finding of abuse or neglect against S.J. based upon his guilty plea to child endangerment.

one month and "was missing to the Division for several months" thereafter.

The Division later learned that H.L. had been incarcerated again on a violation of probation charge. The Division again arranged to bring the children to the jail for weekly visits. H.L. was released from jail in August 2014 and entered another substance abuse program, where she again received parenting skills training. After completing the program in May 2015, H.L. was moved to a halfway house, where she had therapeutic visitation with the children. H.L. continued to receive services and counseling at each of these placements.

In November 2015, H.L. was released from the halfway house and went to live with her parents. H.L. has been unable to secure steady employment and has sometimes been homeless. Prior to her release from the halfway house, H.L. told the Division that her plan was to live with her parents. However, H.L. admitted that her father had sexually abused her when she was approximately the same age as her children. The Division informed H.L. that the children could not be placed with her in her parent's home because of the sexual abuse allegations.

When S.J. was released from jail in August 2013, he contacted the Division, which arranged for visitation with the children, together with parenting classes, domestic violence counseling,

anger management and individual counseling, and substance abuse evaluation and treatment. S.J. entered an intensive outpatient substance abuse program, but failed to complete it. While he was in the program, all of S.J.'s urine screens were positive for alcohol and marijuana.

The Division referred S.J. to an in-patient program, but he chose a different program on his own and successfully completed the first month of treatment. At that time, however, the program gave him "a day pass" and, when S.J. returned, he tested positive for alcohol. As a result, the facility referred S.J. to a detox program, which he failed to attend. Just prior to the guardianship trial, S.J. re-enrolled in the in-patient program.

Both Susan and Sam have special needs. Between August 2012 and May 2015, they were placed in a series of five separate resource homes because of recurring behavioral issues. In May 2015, the Division placed the children with their current foster parent, who wishes to adopt them. At the time of the trial, the children were attending a therapeutic nursery school program and receiving occupational therapy and speech therapy.

Dr. Barry Katz testified at trial as the Division's expert psychologist. After evaluating H.L., Dr. Katz noted that H.L. had maintained her sobriety while incarcerated and in in-patient treatment programs. However, he found that H.L. had "indications

of narcissistic and depressive personality traits," which caused her to place her own needs over those of her special-needs children. As an example, Dr. Katz pointed to H.L.'s decision to have the children live with her father, the man who had sexually abused her, thus exposing the children to the same risk of harm that H.L. suffered when she was a child.

Despite the Division providing H.L. with services, Dr. Katz observed that she continued to have difficulty responding to the needs of her children. Because H.L. had not been able to care for the children since August 2012, Dr. Katz concluded that H.L. was not presently able to provide a safe and stable home for her children and it was unlikely she would be able to do so in the foreseeable future.

After conducting a bonding analysis, Dr. Katz found there was only an "insecure" attachment between H.L. and the children. They did not recognize her as a parental figure. Dr. Katz concluded that the harm Susan and Sam would experience if returned to H.L.'s custody would be "severe [and] enduring to the point of catastrophic." Dr. Katz further opined that H.L. would be unable to "provide a stabl[e] or safe home or care for [her] children."

Dr. Katz reached a similar conclusion following his psychological evaluation of S.J., who admitted that he still suffered from drug and alcohol dependency despite his time in

treatment. At the time of the evaluation, S.J. told Dr. Katz that he was about to be released from his latest in-patient program, but expected that "he may end up using again."

Dr. Katz reviewed S.J.'s "extensive history of domestic violence and violent behaviors" which, despite the services the Division arranged for him, would expose the children to a "high risk of physical abuse and/or neglect as well as emotional abuse" if they were placed in S.J.'s care. Indeed, Dr. Katz opined that if Susan and Sam were returned to their father's care, it would result in "[s]evere, enduring, and catastrophic" harm. Dr. Katz did not anticipate that S.J. would change in the foreseeable future because "despite interventions, despite severe consequences to him," S.J. had "show[n] no signs of remittance."

As a result of his bonding evaluation between S.J. and the children, Dr. Katz opined that as was the case with H.L., the children had only an "insecure attachment" to S.J. The children did not view him as a stable parental figure who would meet their needs in a consistent matter. Therefore, Dr. Katz concluded that the children needed permanency that S.J. could not provide them.

Dr. Katz also conducted a bonding evaluation between the children and their foster parent. Although the foster parent had only been caring for the children for three months at the time of the evaluation, Dr. Katz found that there was an intact and secure

bond between the children and the foster mother. Dr. Katz also found that the children would suffer "significant" and "enduring" harm if they were removed from their foster parent.

S.J. and H.L. did not testify at trial and they called no witnesses.

In her comprehensive opinion, Judge DeCastro reviewed the evidence presented, including the uncontradicted expert testimony, and thereafter concluded that (1) the Division had proven all four prongs of the best interests test by clear and convincing evidence, N.J.S.A. 30:4C-15.1(a); and (2) termination of defendant's parental rights was in Susan's and Sam's best interests. On this appeal, our review of the trial judge's decision is limited. We defer to her expertise as a Family Part judge, Cesare v. Cesare, 154 N.J. 394, 413 (1998), and we are bound by her factual findings so long as they are supported by sufficient credible evidence. N.J. Div. of Youth & Family Servs. v. M.M., 189 N.J. 261, 279 (2007) (citing In re Guardianship of J.T., 269 N.J. Super. 172, 188 (App. Div. 1993)).

After reviewing the record, we conclude that Judge DeCastro's factual findings are fully supported by the record and, in light of those facts, her legal conclusions are unassailable. We have duly considered, and reject, defendants' arguments that their parental rights were terminated because of their poverty and other

inappropriate factors, and that the Division failed to offer them reasonable services. To the contrary, the trial court relied on appropriate considerations, including the Division's repeated efforts to provide services and the children's need for permanency. We therefore affirm substantially for the reasons that Judge DeCastro expressed in her comprehensive and well-reasoned opinion.

Affirmed.